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REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter

Report of the Secretary-General

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I. INTRODUCTION

1. The General Assembly, by resolution 49/58 of 9 December 1994 invited the Secretary-General to submit a report on the question of the implementation of the provisions of the Charter of the United Nations, including Article 50, related to the special economic problems confronting States and arising from the carrying out of sanctions mandated under Chapter VII of the Charter, analysing the proposals and suggestions on this issue contained in the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, on its 1994 session, giving due attention to the possible practical ways and means of carrying them out.

2. At its 1995 session, 1/ the Special Committee:

(a) Recalled the above-mentioned invitation;

(b) Considered that the Secretary-General might usefully take into account, in preparing the requested report, the suggestions and proposals contained in the report of the Special Committee on its 1995 session;

(c) Invited the General Assembly to consider the establishment of an open-ended working group within the framework of the Sixth Committee, at the fiftieth session of the General Assembly, with a view to considering the issue of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, on the basis of the Secretary-General's report.

3. Further to the invitation contained in the above-mentioned General Assembly resolution and in the report of the Special Committee, the Secretary-General has prepared the present report which reviews the proposals and suggestions made or referred to at the two above-mentioned sessions of the Special Committee. The report also analyses, as the case may be, the reaction that those proposals and suggestions elicited in the Special Committee and suggests, where appropriate, possible practical ways to carry them out, should States decide to adopt them.

II. PROPOSALS AND SUGGESTIONS AIMED AT MINIMIZING THE EFFECT OF SANCTIONS ON THIRD STATES

A. Consultations with potentially affected States as regards the imposition of sanctions, and assessment of the potential impact of sanctions on them

4. At the 1994 session of the Special Committee, the following paragraph was suggested for inclusion in a General Assembly resolution (see also paras. 13, 39, 50 and 73 below):

"The General Assembly,

"...

"8. Also requests the Security Council to consider the establishment of a permanent mechanism for consultation between the Council and those Member States most likely to be affected as a result of their implementation of Security Council resolutions imposing sanctions;" 2/

5. In favour of the proposal, the point was made that, if adopted, States called upon to bear an inordinate burden of the sanctions would have early warning and a chance to be consulted beforehand. It was also noted that such a preventive approach would be preferable to ex post facto action. As the goal of sanctions was not to harm third States, due consideration should be given to their situation before applying sanctions.

6. It was further pointed out that while military action was urgent by nature and did not admit delays, economic sanctions took time to put in place and were slow to produce results, so that the holding of prior consultations would not adversely affect their effectiveness.

7. On the other hand, the point was also made that a decision of the Security Council to apply sanctions could not be subjected to any condition not provided for in the Charter. In the maintenance of international peace and security, it was stated, the Council must be able to act swiftly, and urgency might make it difficult or impossible for it to conduct prior consultations.

8. In this connection, the Secretary-General notes that, under Article 41 of the Charter, the Security Council may decide to employ various mandatory measures, including economic sanctions, in order to modify the behaviour of a party that represents a threat to international peace and security. While all Members of the United Nations must apply such measures, the cost for a few States that happen to be neighbours or major trading partners of the target State may prove to be inordinately high.

9. In "An Agenda for Peace" (A/47/277-S/24111), the Secretary-General had proposed that States suffering collateral damage from the sanctions regimes should be entitled not only to consult the Security Council but also to have a realistic possibility of having their difficulties addressed. Subsequently, in the "Supplement to An Agenda for Peace" (A/50/60-S/1995/1, para. 75), the Secretary-General suggested the establishment of a mechanism to carry out the following five main functions:

"(a) To assess, at the request of the Security Council, and before sanctions are imposed, their potential impact on the target country and on third countries;

"(b) To monitor application of the sanctions;

"(c) To measure their effects in order to enable the Security Council to fine-tune them with a view to maximizing their political impact and minimizing collateral damage;

"(d) To ensure the delivery of humanitarian assistance to vulnerable groups;

"(e) To explore ways of assisting Member States that are suffering collateral damage and to evaluate claims submitted by such States under Article 50."

10. Further to the above proposals, the Security Council, when considering the imposition of a sanctions regime, may undertake consultations with third States most likely to be affected as a result of the implementation of the mandatory measures. Such consultations would be an essential factor in ensuring the effectiveness of the sanctions by taking into account the specific concerns of Member States. The Council may also wish to take into consideration the views of relevant intergovernmental organizations with regard to the scope and the modalities of the proposed sanctions regime.

11. Experience gained from the application of sanctions suggests that the Security Council would benefit from an assessment of prevailing conditions in the target State and its economic links, including an analysis of the predictable effects of the intended measures on third countries. The Secretariat would undertake such an analysis and assessment drawing on expertise available not only in the Organization itself but also in the international financial institutions and other programmes and agencies of the United Nations system. If such expertise were not readily available within the United Nations system, expert advice from external sources would have to be sought. In this respect, it may be recalled that the guidelines of the Sanctions Committee concerning the Libyan Arab Jamahiriya had envisaged the assistance of experts from outside the United Nations system, whenever necessary. Such external expertise has also been utilized by the United Nations in relation to the Iraqi and Yugoslav sanctions regimes.

B. Monitoring the effect of sanctions

12. At the 1995 session of the Special Committee, the proposal was made to establish a permanent mechanism for consultations between the Security Council and potentially affected third States, which might include: a preliminary assessment of sanctions or a pre-feasibility study based on objectivity and cost-effectiveness in terms of burden-sharing; regimes of exemption and criteria for suspension; and effective ways and means for addressing special economic problems arising from sanctions implementation. In this connection, at the 1994 session of the Special Committee, it had been proposed that the Council pay special attention to the problems arising from the disruption of communication and transportation lines caused by the implementation of sanctions, as well as to the need to preserve existing infrastructural links, taking into account the unnecessary adverse effects of sanctions as mentioned in section IV of General Assembly resolution 47/120 B of 20 September 1993.

13. Also at the 1994 session and bearing in mind the need to avoid the unnecessary adverse effects of sanctions, the following paragraph was suggested for inclusion in a General Assembly resolution (see also paras. 4 above and 39, 50 and 73 below):

"The General Assembly,

"...

"3. Requests the Security Council to ensure that its committees and other bodies entrusted with the task of monitoring the implementation of sanctions take into account, in discharging their mandates, the need to avoid hardship consequences for other Member States without prejudice to the effectiveness of such sanctions;" 2/

14. Furthermore, at the 1995 session of the Special Committee, support was expressed for the Secretary-General's proposal contained in his "Supplement to an Agenda for Peace" to establish a mechanism, already referred to in paragraph 9 above (particularly subpara. (c)), and paragraphs 15 and 77 below.

15. It is the view of the Secretary-General that this mechanism would enable a comprehensive impact assessment to be undertaken at the request of the Security Council, following the imposition of sanctions, with a view to making necessary adjustments to the sanctions, in order to maximize their political impact and minimize their collateral effects. Ideally, such monitoring of the effects of the sanctions should take place on an ongoing basis, so as to ensure that necessary modifications are made in a timely and regular fashion. Under the relevant resolutions of the Council, the general task of monitoring the application of the mandatory measures imposed by the Council is entrusted, as a rule, to the relevant sanctions committees which are serviced by the Security Council Affairs Division of the Department of Political Affairs. The Council could entrust its sanctions committees with the additional task of assessing the political and socio-economic impact of the sanctions with a view to making necessary recommendations to the Council. The addition of this substantive functioning would, however, require a strengthening of the Security Council Affairs Division.

16. Because of the need for specialized expertise, not readily available in the United Nations, in the recent cases of sanctions against Haiti and the Federal Republic of Yugoslavia (Serbia and Montenegro), the Organization of American States (OAS) and the European Union (EU), jointly with the Organization for Security and Cooperation in Europe (OSCE), the latter two of which through a network of sanctions assistance missions located in States neighbouring the Federal Republic of Yugoslavia (Serbia and Montenegro), have played an important role in monitoring the implementation and impact of sanctions. In order to better support the various sanctions committees, the Secretariat should draw upon all available expertise in the United Nations system and seek outside expert advice on matters relating to the implementation of sanctions.

17. For the most severely affected third countries, the task of assessing and verifying actual losses and additional costs incurred by the affected country, as well as identifying particular areas of assistance, would best be served by special fact-finding missions being dispatched by or on behalf of the Security Council or its relevant sanctions committees. The Council could draw upon such mission reports at the time it reviews the sanctions. In the cases of the sanctions against Southern Rhodesia and Iraq, such missions visited Zambia, Mozambique and Jordan, respectively (see S/26705, pp. 7-12, 27 and 28).

C. Possibility of establishing a time-frame for the application of sanctions, based on their objectives

18. At the 1995 session of the Special Committee, it was suggested that a solution to the question of assistance to affected third States could be found by means of improving the mechanisms and criteria concerning the implementation and lifting of sanctions. In this connection it was noted that sanctions should have clearly defined objectives and should be lifted once those objectives were met, so as not to prolong unnecessarily the adverse effects on third States and on innocent civilians.

19. The Secretary-General has underlined in the "Supplement to An Agenda for Peace" (A/50/60-S/1995/1, para. 68) the importance of clearly defining the objectives for which specific sanctions regimes are imposed. The Secretary-General noted that such objectives are sometimes not clearly defined or change over time. This makes it difficult for the Security Council to determine when the objective can be considered as achieved and sanctions lifted. The President of the Security Council, in a statement made on behalf of the Council on 22 February 1995 (S/PRST/1995/9), supported the views expressed by the Secretary-General, and stated: (a) that the object of economic sanctions was to modify the behaviour of a country or party which represented a threat to international peace and security; (b) that the steps demanded of the country or party subject to sanctions should be clearly defined by the Council; and (c) that the sanctions regime should be subject to periodic review, and should be lifted when the objective of the appropriate provisions of the relevant Council resolutions were achieved.

20. A number of Member States have proposed that when the Security Council decides to impose sanctions it should, at the same time, define objective criteria for determining that their purpose has been achieved. This function has to be seen in the light of the power of the Council, under the Charter, to address on a case-by-case basis situations falling within the purview of Article 39 of the Charter, and to lay out objectives and conditions which have to be met by the target State or party.

21. It is recognized that there is a need for monitoring and review of the situation which resulted in the imposition of the sanctions. Periodic reviews should be made an integral component of a sanctions regime. Such reviews have been provided in the case of sanctions against Iraq, the Libyan Arab Jamahiriya and, most recently, the Federal Republic of Yugoslavia (Serbia and Montenegro). Resolutions imposing sanctions could explicitly make provision for periodic reviews, rather than having the reviews on an ad hoc or "continuous" basis. Reviews by the Council are normally conducted in the course of informal consultations, with a view to assessing the level of compliance of the target State or party with the obligations and conditions stipulated in the relevant resolutions. The work of the Council would benefit from reports submitted by the Secretary-General, at the request of the Council, containing an impartial assessment of the effectiveness of the sanctions and their impact. The strengthening of the capacity of the Secretariat for monitoring and assessment of the sanctions would make possible such timely and reliable reports.

D. Improving the methods of work and ensuring the transparency of the procedures of the Security Council and the sanctions committees

22. At the 1994 session of the Special Committee, it was argued that the current method of work of the Security Council, which relies heavily on closed informal consultations, prevents potentially affected States from exercising their rights under Article 50 of the Charter at a sufficiently early stage. It was suggested that those States should be invited by the Council to take part in the consultations relating to the institution or review of sanctions.

23. The above-mentioned suggestions, however, gave rise to objections. Thus, it was said that the sensitive issues within the sanctions committees' mandate were more appropriately discussed in closed meetings and that suggestions of a lack of transparency in the work of the Security Council largely ignored the realities of the situation. There was really no lack of knowledge or information on the part of any delegation as to what the Council was contemplating before it took action and Member States were not denied the opportunity to make their views known to the Council at any time.

24. At the 1995 Special Committee's session, 1/ the following specific proposals were also made: that a press release be issued, as a general rule, after each meeting of each sanctions committee; that a monthly edition of the status of communications under the "no-objection" procedure be prepared by the Secretariat in respect of the Committees established under Security Council resolutions 661 (1990) of 6 August 1990 and 724 (1991) of 15 December 1991; that the Secretariat also prepare a monthly list of favourable decisions by each sanctions committee; that the report of the Council to the General Assembly contain more information on the work of such committees; that consideration be given to the publication of an annual report by each committee; and that the summary records of the committees be issued in a more timely fashion.

25. The Secretary-General notes that, before imposing sanctions on the target State, the Security Council may decide to invite neighbouring States, as well as major trade partners of the target State, to participate collectively or individually in its informal consultations, so as to give them the possibility to apprise the Council of their concerns and submit specific proposals.

26. In the course of the discussions in the Special Committee, a number of States raised objections to any arrangements which might conflict with the need of the Council to act swiftly in urgent situations. In this connection, it may be noted that in cases in which the imposition of sanctions represents an immediate reaction to a sudden event, as in the case of Iraq's invasion of Kuwait, the suggested consultations with the affected States could take place immediately after the sanctions have been imposed.

27. The monthly circulation of the tentative forecast of the Security Council's programme of work, including a list of forthcoming reports of the Secretary-General and reviews of existing sanctions regimes, would help affected States to plan in advance the submission of relevant data or communications to the Council.

28. The Security Council could also mandate the relevant sanctions committees and their working groups concerning Article 50 to monitor and report on the response of the international community to the appeals addressed by the Secretary-General for assistance to the applicant States (see also, in this connection, para. 43 below).

29. With a view to further streamlining the working procedures of the sanctions committees and promoting greater transparency in the conduct of their work, the President of the Security Council on 29 March 1995 outlined significant measures to be implemented by the various committees (S/1995/234). In this regard, it should be noted that the respective committees, drawing on their own experience as well as from the experience of other sanctions committees, have also initiated certain measures to simplify their procedures of work and promote more transparency. Without prejudice to the effectiveness of the sanctions imposed by the Council, the committees have attempted to minimize the hardship consequences on other Member States by taking steps to facilitate the expeditious processing of applications for shipments of allowable goods, particularly from affected States. The sanctions committees have, when appropriate, made recommendations to the Security Council to amend existing sanctions regimes in order to respond to certain, mostly humanitarian, emergencies.

E. Exemptions from sanctions regimes

30. In the course of the 1994 and 1995 sessions of the Special Committee, it was suggested that, when appropriate, the Security Council might decide to allow some exceptions from the application of sanctions in favour of States most likely to be affected by their implementation, provided that those exceptions did not run counter to the object of the sanctions. When necessary, a mechanism for international control could be introduced for this purpose.

31. It was noted in this connection that the question of sanctions should not be looked at in isolation. Due account should be taken of the enforcement and implementation costs for the United Nations. Consideration should be given in any study related to Article 50 of the Charter to introducing in the administration of sanctions regimes an element of cost recovery from those making applications to a sanctions committee.

32. The suggestion was also made that the sections of the Secretariat dealing directly with sanctions, including the consideration of submissions of affected third States, should be reinforced as envisaged by the President of the Security Council in his statement of 22 February 1995 (S/PRST/1995/9) (see, in this connection, para. 78 below).

33. As regards this group of proposals, the Secretary-General notes that the practice, so far, has been for the Security Council itself or the relevant sanctions committees to grant partial or limited exemptions under exceptional circumstances, on a case-by-case basis, and under appropriate forms of monitoring or control.

34. Indeed, the Security Council has consistently made provision for limited exemptions permitting certain transactions with the target State in order to meet the essential humanitarian needs of its civilian population. Furthermore, in the case of the sanctions against Haiti, in addition to humanitarian supplies, "trade in informational materials" was exempted by Security Council resolution 917 (1994) of 6 May 1994 in the interest of ensuring the free flow of information. In its resolution 967 (1994) of 14 December 1994, the Council also authorized, for humanitarian considerations, the export of diphtheria anti-serum for 30 days from the Federal Republic of Yugoslavia (Serbia and Montenegro) as an exemption to the mandatory sanctions against that country. Notwithstanding the existing arms embargo, the Council in its resolution 1005 (1995) of 17 July 1995 authorized the supply to Rwanda of appropriate amounts of explosives intended exclusively for use in established humanitarian de-mining programmes.

35. Furthermore, the Security Council has authorized designated transactions or services for specific commodities or products of crucial importance to neighbouring States or the maintenance of certain transportation or communication links. For example, by its resolution 883 (1993) of 11 November 1993 concerning the Libyan Arab Jamahiriya, the Council exempted from the freeze specific funds derived from the sale or supply of any petroleum or petroleum products, including natural gas and natural gas products, or agricultural products or commodities, originating in the Libyan Arab Jamahiriya and exported therefrom. In the case of the Iraqi sanctions, the relevant committee, in view of Jordan's special economic problems, took note in May 1991 of Jordan's request for resumption of imports of oil and oil derivatives from Iraq, pending any arrangements that could be made to obtain supplies of oil from other sources and on the understanding that such Iraqi oil exports were subject to the provisions of Council resolution 692 (1991) of 20 May 1991. With a view to preserving the safety of international navigation on the River Danube, the Council has exceptionally allowed vessels of the Federal Republic of Yugoslavia (Serbia and Montenegro) to use the locks of the Iron Gates I system on the left hand bank of the Danube while those on the right hand bank of the river underwent urgent repairs (Security Council resolution 992 (1995) of 11 May 1995). In addition, the sanctions committee concerning Yugoslavia has, on several occasions, authorized, as an exemption, the supply of fuel to the Federal Republic of Yugoslavia (Serbia and Montenegro) for ice-breakers in connection with navigation on the Danube and the transit of electric energy through that country to Albania.

36. The authority to determine the circumstances under which exemptions from the measures decided by the Security Council can be granted without compromising the objective of the sanctions resides solely with the Council. As to the form in which exemptions may be granted, the Council could decide on such an exemption in the resolution by which it imposes sanctions, or by a subsequent resolution. The Council could also delegate to the relevant sanctions committee the authority to grant or renew an exemption, especially if the conditions have been stated in a resolution. The Council may adopt a flexible approach, initially granting the exemption for a short period of time, and renewing or extending it if the intended results were being achieved. On the other hand, the Council could withdraw an earlier exemption or tighten the monitoring

arrangements to ensure that the effectiveness of the sanctions is not undermined.

37. In case an exemption is granted, the State or States in question should report at specific intervals to the Security Council or the relevant committee on the implementation of the exemption, providing details such as quantities of goods traded, revenues involved, the volume of traffic through authorized transportation and communication links, the progress in solving the situation which determined the initial granting of the exemption, violations detected and measures taken to prevent them.

38. The granting of exemptions and their monitoring would require an enhanced capacity on the part of the Secretariat, particularly when the Security Council or the relevant sanctions committee request the Secretary-General to carry out ad hoc missions to verify the implementation of the exemptions and submit periodic reports. In addition, the Council or the sanctions committees could seek the assistance of regional and other intergovernmental organizations.

III. PROPOSALS AND SUGGESTIONS ON THE PROVISION OF ASSISTANCE TO THIRD STATES AFFECTED BY SANCTIONS

A. Establishment of guidelines for the consideration of applications for assistance, including the assessment of special economic problems faced by third States as a result of sanctions

39. At the 1994 session of the Special Committee, the following paragraph was suggested for inclusion in a General Assembly resolution (see also paras. 4 and 13 above, and 50 and 73 below):

"The General Assembly,

"...

"7. Requests the Security Council to consider preparing a set of guidelines and/or procedure to be applied in the consideration of the applications by the affected countries for assistance, in the context of Article 50. The guidelines may include, inter alia:

"(a) The right to approach the Security Council for assistance;

"(b) Consideration, without exception and undue delay, of all applications for assistance under Article 50;

"(c) Rendering non-preferential and fair treatment to all applications;

"(d) Inviting the affected Member States to its meetings and to the meetings of its subsidiary bodies;

"(e) Procedure and methodology for determining and evaluating losses as a result of the imposition of sanctions;" 2/

40. At the same session, it was suggested that the practical problem of the assessment of the actual damage suffered by third States as a result of the imposition of sanctions should be addressed and that a methodology should be developed to that end. Such a methodology could not be developed in the abstract and would have to be based on a technical study aimed at determining the criteria to be applied, which should be carried out by international financial institutions, the opinion of Member States being also solicited. It was also proposed that the Secretary-General, in his capacity as Chairman of the Administrative Committee on Coordination, should be requested to undertake an in-depth study of the methodology to be used in assessing damage caused to third States and that the role which could be played by the Economic and Social Council should also be explored.

41. As regards these proposals, the Secretary-General notes that, in order to permit the more effective and prompt consideration of applications under Article 50 by the respective sanctions committees, a set of guidelines or procedures would be useful. Such guidelines or procedures should cover, inter alia, the following:

(a) The right to approach the Security Council;

(b) Expeditious consideration of all applications for assistance under Article 50;

(c) Rendering non-preferential and fair treatment to all applications;

(d) Inviting the affected Member States to its meetings and to the meetings of its subsidiary bodies;

(e) The methodology for determining and evaluating losses as a result of the imposition of sanctions.

42. The guidelines should also include provision for the Security Council to undertake periodic reviews of the response of the international community to the appeals addressed by the Secretary-General for assistance to the applicant States. To that end the Council could request the Secretary-General, or the sanctions committees, to monitor the assistance provided to affected States. The guidelines may also contain a general statement to the effect that the resolutions imposing sanctions, or the recommendations issued in response to applications under Article 50, will include a request to States and international agencies to report to the Secretary-General on the assistance provided. Such reports would be consolidated for review and consideration by the Security Council.

43. In this connection, the Secretary-General, in his previous report (A/48/573-S/26705, para. 159), observed that it was essential that both the General Assembly and the Economic and Social Council join and support the appeal by the Security Council, in the context of Article 50 of the Charter, and its follow-up by the Secretary-General for assistance to States confronted with

special economic problems arising from the carrying out of preventive or enforcement measures imposed by the Security Council. He also observed that that would emphasize and enhance the commitment of the international community to respond positively and expeditiously to the requests for assistance in such circumstances. Moreover, given the functions and powers vested in the Economic and Social Council under Articles 63 and 64 of the Charter, it might play, within its new structures, a useful coordination role in relation to relevant activities of the specialized agencies and other components of the United Nations system. In the Secretary-General's view, that would give a timely and practical meaning to cooperation between the Security Council and the Economic and Social Council, as provided under Article 65 of the Charter.

44. As regards the methodology for impact assessment, namely for evaluating losses and special economic problems faced by third States as a result of sanctions, it should be noted that, in practice, the essence of the consultation process between the Security Council and an affected State, under the provisions of Article 50 of the Charter, has been the examination by the Council or its subsidiary body of the State's request for assistance, based on the State's own estimates of the losses and costs incurred by it as a result of carrying out of the sanctions mandated by the Council. Despite numerous cases of past and current application of Article 50, in connection with sanctions against Southern Rhodesia, Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro), there is no uniform and internationally recognized methodology for identifying and assessing the special economic problems of non-target States affected by the implementation of mandatory economic sanctions. Thus, affected countries as well as the funding agencies have performed separately their quantitative assessments, often applying different standards and criteria. As a result, the available evaluations differ substantially in timing, coverage and scope. Moreover, the range of remedial measures formulated in the process of such examination and the level of the follow-up assistance activities, have also been viewed differently by the affected countries and the donor community.

45. Naturally, the actual magnitude of the sanctions collateral damage may vary substantially from case to case. Among various affected countries, those nations that are most contiguous - geographically and/or economically - to the sanctioned State tend to experience the most severe hardships as a result of the sanctions. In such instances, the tasks of undertaking, in cooperation with the Government concerned, a reliable assessment of the affected country's needs and suggesting appropriate remedies can be best served by an ad hoc United Nations inter-agency mission being dispatched on the spot. For example, in the case of sanctions against Southern Rhodesia, such missions visited Zambia and Mozambique; and in the case of sanctions against Iraq, such a mission was sent to Jordan. The missions' reports submitted to the Security Council (and/or the Economic and Social Council) provided detailed analyses of the specific country situations and served as an important basis for action on behalf of those affected countries.

46. However, as sanctions have become a more commonly used instrument for peace and security, a larger number of States have been affected by the implementation of the United Nations-imposed sanctions and have invoked Article 50 of the Charter. For this reason, it is essential to identify a set of general principles or criteria for the purpose of impact analysis and collateral damage

assessment on a more standardized, comparable and mutually acceptable basis. In turn, an accurate impact assessment is necessary both to design the appropriate domestic policy response and to seek the adequate external assistance. As regards the latter, the primary task should be, therefore, to develop a truly common methodology which will be used by the affected States in preparing the explanatory material for their requests for assistance as well as by the United Nations system, including the international financial institutions, in considering the provision of assistance.

47. Most recently, methodological issues and data problems of impact analysis were addressed in several United Nations publications prepared, in particular, by the Department for Economic and Social Information and Policy Analysis of the Secretariat, as well as special studies carried out by the International Monetary Fund (IMF) and the United Nations Development Programme (UNDP). Yet, no substantive intergovernmental or inter-agency discussion on methodology of impact assessment has thus far taken place. Nevertheless, there appears to be an emerging consensus on several basic principles or guidelines for identifying and assessing the special economic problems of States arising from the implementation by them of sanctions imposed under Chapter VII of the Charter.

48. In order to ensure its system-wide origin and application, a general methodology could be elaborated, as previously suggested (see A/48/573-S/26705, para. 155), by an ad hoc expert body to be convened under the auspices of the Administrative Committee on Coordination, with the participation of the United Nations, including the Department for Economic and Social Information and Policy Analysis, IMF, the World Bank, UNDP and other competent organizations of the United Nations system. Upon completion, the proposed methodology should be submitted to Member States whose political support both at the United Nations intergovernmental bodies (e.g., the General Assembly, the Security Council and the Economic and Social Council) and in the governing bodies of the agencies concerned would be necessary for its universal acceptability and effective application. Subsequently, UNDP could provide, through its resident coordinator system, technical assistance to interested States with regard to the dissemination and utilization of the methodology. When needed, the services of special consultants or small expert missions could also be made available to the most severely affected countries to assist them in quantifying their losses and costs resulting from the implementation of sanctions, according to the established methodology.

49. The credibility of the process is predicated upon the availability of reliable and up-to-date macroeconomic data concerning the affected countries. As this has not always been the case, data problems have imposed considerable limitations on the evaluation of claims submitted by several countries in question. For this reason, the proposed course of action in developing a common methodology of impact assessment should be supplemented and supported by furthering cooperation on a system-wide basis and beyond in the area of statistics. As a result, this would not only improve the collection and processing of statistical information, but also upgrade the quality of impact assessment by the affected countries.

B. Establishment of a Trust Fund

50. At the 1994 session of the Special Committee, the following paragraphs were suggested for inclusion in a General Assembly resolution (see also paras. 4, 13 and 39 above and 73 below):

"The General Assembly,

"...

"1. Decides to establish a trust fund, consistent with relevant resolutions of the Security Council, to assist financially third States affected by the imposition of sanctions under Chapter VII; contributions to the fund shall consist of:

"(a) A percentage of assessed contributions;

"(b) Voluntary contributions from Member States and from funds available to international organizations both inside and outside the United Nations system, in particular the international financial institutions and the regional development banks, as well as non-governmental organizations and private institutions and individuals;

"2. Invites the Security Council:

"(a) To determine the level of the Trust Fund for each particular case of the imposition of sanctions under Chapter VII of the Charter (on a case-by-case basis), in accordance with the submissions made by the affected Member States;

"(b) To manage and operate the Trust Fund where appropriate in consultation with the Secretary-General, or any other body deemed appropriate by the Security Council for this purpose, and the affected Member States should be able to approach this body without any exception for redressal of their problems;

"...

"4. Invites the Secretary-General to prepare draft guidelines on the operation of the Trust Fund and to present these guidelines to the Security Council for further consideration and adoption;

"5. Resources from the Trust Fund should be utilized to provide direct financial assistance, inter alia, through bilateral or multilateral credit lines, as well as to finance technical cooperation programmes in support of the affected countries, in the context of Article 50;".

51. In favour of the proposal, the view was expressed in the Special Committee that the idea of a fund was not new; it had found expression, for instance, in the establishment in 1991 of the Global Environment Facility, which had been set up to address specific environmental problems. It was noted that a proposal of this nature provided a better response to the problems of countries affected by

the imposition of sanctions than bilateral assistance or existing financial institutions, which were established for different purposes. It was also pointed out, in support of the proposal, that the right to consult provided for in Article 50 of the Charter was not an end in itself and was intended by the drafters of the Charter to have tangible and concrete effects.

52. On the other hand, the view was also expressed that the problem of assistance to third States was very complex and of such magnitude that requests for assistance were bound to exceed by far the resources of the proposed fund. It was important to keep in mind that it was essential to respect the basic provisions of the Charter and that there was an unqualified obligation to apply mandatory sanctions. It was also noted that the concept of compensation for any economic damage consequent on the imposition of sanctions was not found in the Charter.

53. The draft resolution referred to in paragraph 50 above contains a proposal for the General Assembly to establish a trust fund that would be funded by a percentage of assessed contributions as well as by voluntary contributions. The draft resolution would also invite the Security Council to determine the level of the trust fund for each particular case of the imposition of sanctions under Chapter VII of the Charter, and to manage and operate the trust fund where appropriate in consultation with the Secretary-General.

54. The establishment and management of trust funds are governed by the Financial Regulations and Rules of the United Nations and require observance of the Staff Regulations and Rules of the United Nations and other policies or procedures promulgated by the Secretary-General. Contributions to trust funds are made on a voluntary basis to finance the activities for which the fund was established. It is therefore stressed that if a trust fund is to be established, the principles of assessed contributions, as proposed in operative paragraph 1 (a) of the draft resolution, do not apply.

55. The administration of trust funds falls under the responsibility of the Secretary-General. Should the General Assembly decide to adopt the proposal referred to in paragraph 50 above, responsibility for the establishment and management of the trust fund should be entrusted to the Secretary-General in accordance with terms of reference as decided by the Security Council.

56. It is also the view of the Secretary-General that prior to the establishment of any such trust fund, there should be some clear indication and assurance that voluntary contributions from Member States would be forthcoming.

C. Economic assistance by international financial institutions

57. At the 1994 and 1995 sessions of the Special Committee, it was suggested that rather than envisaging the setting up of new institutions for the assistance to third States affected by the application of sanctions, utilization should be made of existing international financial institutions, such as the World Bank, IMF, regional development banks, the General Agreement on Tariffs and Trade (GATT), UNDP and non-governmental organizations. Those institutions,

it was argued, were well placed to assist in the formulation of policies and in coordinating financial assistance to adversely affected States. It was also noted, in this connection, that international financial institutions should open special windows of credit to provide direct assistance or to support technical projects, and that the compensatory and contingency financing facility of IMF should be more actively utilized.

58. On the other hand, the view was also expressed that international financial institutions did not in themselves provide a comprehensive solution, since they lacked the necessary additional resources and the mechanisms to solve the problems.

59. The report of the Secretary-General prepared pursuant to the note by the President of the Security Council (S/25036) regarding the question of special economic problems of States as a result of sanctions imposed under Chapter VII of the Charter of the United Nations (A/48/573-S/26705) contains, in its relevant sections, detailed information on the assistance activities undertaken by the United Nations system, in particular the international financial institutions (the World Bank and IMF) and UNDP, and the regional development banks, on behalf of the affected countries invoking Article 50 of the Charter. Additional and more recent information in this regard is available in the report of the Secretary-General, entitled "Economic assistance to States affected by the implementation of the Security Council resolutions imposing sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro)" (A/49/356), as well as the annual overview reports of the Administrative Committee on Coordination for the years 1992 (E/1993/81), 1993 (E/1994/19) and 1994 (E/1995/21).

60. The information provided in those reports indicates that the competent agencies, organizations and bodies of the United Nations system, including the international financial institutions, share the concern about the special economic problems of States arising from the implementation by them of sanctions imposed under Chapter VII of the Charter and have taken due note of the relevant recommendations of the Security Council sanctions committees as well as the follow-up appeals for assistance to the affected countries. In response, most of the agencies intensified their assistance activities with regard to such countries, while acting within their respective mandates, existing facilities and available financial resources. In several cases, they undertook emergency measures and launched special assistance projects with a view to mitigating the immediate hardships encountered and urgent needs faced by the affected countries.

61. For example, IMF took prompt action, in 1990, to adapt and expand its facilities and policies to provide financial support to its member countries affected by the Gulf crisis. Those measures, which remained in effect in 1991-1992, as appropriate, included: (a) introduction of a temporary "oil element" into the compensatory and contingency financing facility to compensate member countries for sharp, unexpected rises in the cost of their imports of crude petroleum, petroleum products and natural gas; (b) quicker access to compensatory credit - in the wake of a steep fall in export receipts - by using more estimated, rather than actual, data to calculate the shortfall; (c) broader coverage of compensatory financing under the compensatory and contingency

financing facility by extending eligibility for financial compensation to a wider range of services, including shortfalls in earnings from pipelines, canal transit fees, shipping, transportation, construction and insurance; (d) added flexibility in obtaining contingency financing in the framework of IMF stand-by and extended arrangements already in force that would have at least six months left to go, at the time of their review; (e) increased or accelerated disbursement of financing under IMF arrangements by rephasing of drawings and augmentation of financing to member countries reinforcing their adjustment efforts; (f) increased flexibility with regard to the availability of low-cost financing extended to poorer countries under the enhanced structural adjustment facility; and (g) temporary relaxation or suspension of some borrowing limits under the enlarged access policy.

62. In more general terms, IMF has indicated (see A/48/573-S/26705, para. 142) that it can provide help through policy advice, including a full assessment of the country's external situation, aimed at ensuring that the mix of adjustment policies and external financing adopted are consistent with the country's medium-term objectives. The Fund can also assist through efforts to mobilize financial assistance in the context of consultative groups, including playing an important technical assistance role for these and other groups. The Fund has also indicated that it stands ready to provide financial assistance under its existing facilities to any member experiencing balance of payments difficulties, including those related to the spill-over effects of sanctions.

63. In its turn, the World Bank has reported (see A/48/573-S/26705, para. 143) that assistance measures available to Bank members provided adequate flexibility for prompt actions to be taken to help meet the most immediate needs of affected countries. The measures cover the following five main areas: (a) assistance in designing appropriate policy responses; (b) accelerated disbursements from existing loans and credits; (c) use of coordination mechanisms such as consultative groups, to mobilize and coordinate support for affected States; (d) increased cost-sharing limits to enable the Bank to finance a higher proportion of costs of ongoing and new projects; and (e) expanded lending by the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA).

64. At the regional level, financial and technical assistance to the affected countries has also been provided by the regional development banks: the African Development Bank (AfDB), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the Inter-American Development Bank (IDB) and the Islamic Development Bank. Thus, the responses of these institutions to the Gulf crisis comprised, within their respective mandates and operational frameworks, the provision of grants and soft loans to the most seriously affected countries, rapid-disbursement funding for assistance programmes, financing of key production inputs, enhanced lending and technical cooperation (see A/48/573-S/26705, para. 123). However, some of these banks have indicated that their charter and founding agreements impose certain limitations or prohibitions on particular types of action (e.g., fast disbursing budgetary assistance, in the case of EBRD). Nevertheless, it is essential that the regional development banks realize, to the extent possible, their potential in insulating member States from the collateral damage of sanctions.

65. Based on the available information, it appears that the international financial institutions, both at the global and regional levels, possess, in principle, the required expertise, existing instruments and resources to assist Member States in coping with such external shocks to their economies as the imposition of sanctions. Indeed, the World Bank and IMF have substantial programmes of financial and technical assistance to most countries that have been affected by the implementation of sanctions against Iraq and the Federal Republic of Yugoslavia (Serbia and Montenegro). In practice, these programmes of assistance are designed in the context of the country's overall economic situation and are intended to support more comprehensive and longer term objectives of structural adjustment, economic reform or systemic transformation. It is important, therefore, that such ongoing assistance programmes be reviewed by these institutions on a case-by-case basis when appeals for special economic assistance under the provisions of Article 50 so require, in order to make them as responsive as possible to the particular, sanctions-related problems of the affected countries.

66. In this connection, Governments have called upon the international financial institutions to consider how the existing facilities of IMF and the World Bank's mechanisms might be better utilized to mitigate the adverse effects of sanctions on third States. In response, IMF has undertaken efforts to ensure that the affected countries receive a higher than average access to the Fund's resources and that their drawings be made on more favourable terms, in recognition of the losses and costs incurred by them as a result of the sanctions regime. Similarly, within the priorities of the investment programmes in the affected countries, the World Bank and some regional development banks have contemplated redesigning the relevant projects, to reallocate funds under existing loans and credits and expanding lending, taking into account the sanctions-related concerns. Most important, however, is the need to mobilize additional financial resources from all potential funding sources (e.g., through Consultative Group meetings for the countries concerned), in order to address specifically and directly the special economic problems of third States arising from the implementation of measures imposed by the Security Council.

67. Moreover, certain streamlining or adjustment may be desirable in reporting procedures that would enable all the donors, including the international financial institutions, to identify clearly and distinctly the assistance provided by them to alleviate the special economic problems of the affected countries invoking Article 50 of the Charter. In turn, such improvements would make it easier to collect, aggregate and assess the relevant information to be submitted by the Secretariat to the intergovernmental bodies concerned, thereby facilitating their periodic review and appraisal of the collective response of the United Nations system and the international community at large to the appeals for assistance to the affected States.

D. Bilateral economic assistance

68. In the course of the two most recent sessions of the Special Committee, it was noted that third States affected by Security Council sanctions could avail themselves of bilateral assistance from donor countries and that a number of affected States had in fact already been assisted in that manner. It was also

noted that problems stemming from the imposition of sanctions were in many cases part and parcel of the overall economic situation of the affected States and did not lend themselves to a piecemeal solution. It was also suggested that the possibilities offered by trade preferences and investments in particularly affected industries deserved to be further explored.

69. In connection with the possibility of bilateral economic assistance, the Secretary-General would like to note that, in the absence of a permanent mechanism at the United Nations for the implementation of Article 50, economic assistance to the affected States has thus far depended on the political will of countries that are in a position to provide such assistance and on the capacity of ad hoc assistance coordination arrangements to mobilize and channel additional resources in support of the countries in need. Appeals launched by the Secretary-General on behalf of the affected countries have not necessarily evoked the full and effective response of the international community, in part for lack of an established forum for consultations between the countries concerned and the donor community at large, where an assessment of needs, based on a common methodology, could be correlated with joint elaboration of specific remedial measures, including the identification of funding sources.

70. Although several donor countries provided to the Secretary-General specific information on their assistance to the affected States, which was summarized in the previous reports on the subject (see A/48/573-S/26705, paras. 107-113, and A/49/376, paras. 35-43). It has not been possible in all cases to identify distinctly and estimate fully the amount of assistance directly intended to address the special economic problems of the affected States. It would however appear that the bulk of the reported assistance has been part of the ongoing assistance activities and has not necessarily involved additionality of funds to compensate for the actual losses and additional costs incurred by the affected countries as a result of the sanctions. In many instances, such outcome has been disappointing for the affected countries that, while appreciating the emergency relief efforts, continue to believe that the response by the donor community at large has not been commensurate with the magnitude of their hardships, in particular the longer term effects of the sanctions on their economies.

71. For example, in the case of sanctions against Iraq, specific measures of bilateral assistance included debt relief, untied emergency commodity loans on highly concessional terms, project and development assistance loans, food aid and oil deliveries. In cooperation with humanitarian agencies, bilateral assistance was also provided to displaced persons and refugees, including repatriation of migrant workers to their countries of origin. Most important was the establishment, in September 1990, by States members of the Group of Seven and of the European Community as well as the Gulf States and the Republic of Korea, of the Gulf Crisis Financial Coordination Group to mobilize financial assistance for the most seriously affected countries. In 1990-1991, the Group committed a total of $15.7 billion, mainly to three "front-line" States (Egypt, Jordan and Turkey), of which about $8.3 billion was disbursed, primarily as balance-of-payments grants and highly concessional loans, in-kind assistance and project loans. Since the emergency operations have been completed, no further information regarding bilateral assistance to the affected States has been received.

72. In the case of sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro), the important initiative of the then Conference on Security and Cooperation in Europe (now the Organization for Security and Cooperation in Europe (OSCE)) to convene, in early 1994 at Vienna, a special meeting to identify international projects to help affected States in the region to better cope with the effects of the sanctions has resulted in defining a viable approach towards supporting a number of infrastructure projects and integrating them into a longer term regional perspective of transport, infrastructure and communications development. To this end, the Commission of the European Communities allocated in 1994 some 100 million European Currency Units (ECUs), and the transport infrastructure activities financed under the Poland Hungary Aid for the Reconstruction of the Economy (PHARE) programme included road rehabilitation projects, border-crossing modernization, upgrading customs facilities and establishment of customs corridors. However, the requirements of the affected countries go beyond the existing funding. In particular, additional resources are needed to carry out longer-term transport infrastructure projects as well as to take special measures in the fields of telecommunications, energy, water supply and the environment. A proposal to convene at the United Nations special consultative meetings on those issues, with the participation of the donor countries, relevant agencies and the affected countries, was recently presented to the Secretary-General by Bulgaria, Greece, the Republic of Moldova, Romania and Ukraine (A/50/189-S/1995/412).

E. Other forms of assistance

73. At the 1994 session of the Special Committee, the following paragraph was suggested for inclusion in a General Assembly resolution (see also paras. 4, 13, 39 and 50 above):

> "6. All other types of support, including direct assistance in cash or in kind, provision of alternative sources of supply and alternative markets, specific commodity purchase agreements, compensatory adjustments of international tariffs, assistance for promotion of investments and technical cooperation to the affected countries, should be encouraged;" 2/

74. It should be noted in this connection that, in addition to the economic assistance that can be provided by international financial institutions and bilateral donors, there is also a wide range of other types of support that can be provided to the affected countries experiencing economic problems arising from the imposition of sanctions on a State or States under Article 50 of the Charter. These can include direct assistance in cash or in kind, technical cooperation, the provision of alternative sources of supply and alternative markets, specific commodity purchase agreements, compensatory adjustments of international tariffs, and assistance for promotion of investments.

75. There are some organizational components of the United Nations system that may be in a position to provide policy advice and/or assistance in some of these areas, including UNDP, the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Population Fund (UNFPA) and the United Nations Conference on Trade and Development (UNCTAD), given their mandates on various technical areas. In addition, the World Trade Organization (WTO), the

successor organization to GATT, can also be of assistance in defining special trade provisions for States affected by sanctions imposed on another State where the third countries affected are contracting parties. Such provisions could include any of the following: (a) the application of trade restrictions so as to safeguard balance of payments; (b) the granting of special trade preferences to affected countries on a temporary basis by other members of the United Nations such as suspension of custom tariffs and non-tariff measures on their export products, and (c) the granting of special measures in the form of concessional credits and financial aid to offset critical shortages in the supply of basic goods and commodities.

76. For example, in the case of sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro), some ideas of alternative forms of compensation/assistance, other than direct monetary compensation, to the affected countries were elaborated (see A/49/356, paras. 64-66). These included, inter alia: (a) a set-aside programme, under which a portion of the future reconstruction and development projects in Bosnia and Herzegovina could be set aside or subcontracted to the interested affected countries to help them develop their businesses; (b) trade concessions, such as allocating to the affected countries some of the quotas that had previously belonged to the target State or otherwise providing favourable access to markets for their goods and services; (c) "doable programmes" in the affected countries, under which donors would contribute technical and other project-specific assistance on a priority basis; and (d) promotion of foreign investment to the affected countries, through multilateral or bilateral investment guarantees by the donor Governments. Given the nature of the above proposals, they were intended for consideration by the competent national and international authorities on whom their possible approval and realization would be incumbent.

F. Secretariat arrangements

77. At the 1995 session of the Special Committee, support was expressed for the Secretary-General's proposal contained in his "Supplement to an Agenda for Peace" to establish a mechanism, also referred to in paragraphs 9 and 14 above, which, inter alia, would explore ways of assisting Member States that are suffering collateral damage and to evaluate claims submitted by such States under Article 50.

78. In view of the increased reliance of the Security Council on the instrument of sanctions, the Secretary-General has taken steps to reinforce the unit dealing directly with sanctions in the Department of Political Affairs. Furthermore, cooperation and coordination with regional intergovernmental organizations has been considerably enhanced with a view to providing the sanctions committees and the Secretariat with customs advice and other needed expertise.

79. However, further steps need to be taken in order to tackle the whole gamut of problems encountered in the implementation of sanctions and, in particular, to strengthen the Secretariat's analytical and assessment capability to gauge the effectiveness of sanctions and their collateral effects. Since the purpose of the proposed mechanism would be to assist the Security Council and its

sanctions committees, it would have to be located in the United Nations Secretariat, but should draw on expertise available throughout the United Nations system, especially that of the Bretton Woods institutions. It should also be in a position to benefit from outside specialized expertise not readily available in the Secretariat.

80. In the light of the above, it would appear as particularly important that the proposed mechanism on sanctions should pay special attention to exploring all appropriate ways and means of assisting - both on bilateral and multilateral levels - States that are suffering collateral damage. A first practical step in this direction could be the development, under the auspices of the Administrative Committee on Coordination, of general guidelines concerning assistance to countries invoking Article 50 of the Charter. These guidelines, to be prepared in close cooperation with the donor community, the relevant agencies of the United Nations system and the affected countries, may contain such elements as (a) an inventory of assistance measures used in the past and recommended for the future; (b) a designation of an appropriate forum for consultations among all concerned to mobilize and channel the resources to provide assistance; and (c) monitoring, coordination and assessment arrangements. The proposed methodology for impact assessment referred to in paragraph 44 above may also become part of the guidelines, in order to ensure the needed link between the two processes in the practical implementation of Article 50.

Notes

1/ See Official Records of the General Assembly, Fiftieth Session, Supplement No. 33 (A/50/33).

2/ Official Records of the General Assembly, Forty-ninth Session, Supplement No. 33 (A/49/33), para. 52.

3/ See: report of the Secretary-General prepared pursuant to the note by the President of the Security Council (S/25036) regarding the question of special economic problems of States as a result of sanctions imposed under Chapter VII of the Charter of the United Nations (A/48/573-S/26705, paras. 70-86); World Economic and Social Survey, 1994 (United Nations publication, Sales No. E.94.II.C.1, Box IV.2); report of the Secretary-General on economic assistance to States affected by the implementation of the Security Council resolutions imposing sanctions against the Federal Republic of Yugoslavia (Serbia and Montenegro) (A/49/356).